

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARPENTERS' DISTRICT COUNSEL)
OF GREATER ST. LOUIS AND)
VICINITY, et al.,)

Plaintiffs,)

vs.)

Case No. 4:10CV430MLM

H2K CONSTRUCTION, LLC.,)
BLUEHILL PROPERTIES, LLC., et al.,)

Defendants.)

MEMORANDUM OPINION

On June 7, 2010 this matter came before the court for a hearing on plaintiffs' Motion for Default Judgment. [Doc. 18]¹ Mr. Brian Love appeared on behalf of plaintiffs. Defendants had notice of the hearing. See Response to Court Order which indicates defendant H2K Construction, LLC and Bluehill Properties, LLC were served on May 24, 2010 with a copy of the May 21, 2010 court Order scheduling a hearing on plaintiffs' Motion for Default Judgment. (Doc. 21, 21-1 and 21-2)² No one appeared on behalf of defendants.

FACTS

This case is based on the following operative facts which are unopposed and are therefore admitted: H2K Construction, LLC has been a party to a collective

¹ The hearing was conducted by United States Magistrate Judge Mary Ann L. Medler. I have reviewed the file and the documents submitted in support of the Motion and have based my findings and opinions thereon.

² The four individual defendants have filed for bankruptcy protection and the case has been stayed as to them.

bargaining agreement with the Carpenters District Counsel of Greater St. Louis which requires defendant H2K Construction, LLC to submit monthly reports showing all hours worked by each covered employee and to make contributions to the Carpenters Pension and Health & Welfare Funds.

The collective bargaining agreement to which H2K Construction, LLC is bound requires the payment of twenty percent (20%) liquidated damages on delinquent contributions, plus 10 percent (10%) interest. The agreement also requires delinquent employers to pay the Funds' attorneys' fees and court costs.

H2K Construction, LLC has failed to make the required contributions for the period of December, 2009 through February, 2010 in the total amount of \$76,647.98. In addition, \$15,329.60 in liquidated damages and \$2,473.41 in interest are owed through April, 2010.

On February 4, 2009 plaintiffs made a loan of \$250,000.00 to H2K Construction, LLC and Bluehill Properties, LLC who promised to repay this loan with four percent (4%) annual interest.

This loan was memorialized by a written Promissory Note. The Promissory Note provided that default would occur upon defendants' failure to make a payment when due or failure to remain current in fringe benefit contributions.

Defendants defaulted on the Promissory Note by, among other things, failing to make payments, and failing to remain current in fringe benefit contributions. The balance of the Promissory Note is \$224,095.09. The Promissory Note also requires

that defendants pay the attorneys' fees and costs associated with collection on the note. Plaintiffs have incurred \$761.00 in legal fees and \$649.00 in court costs.

DISCUSSION

In regard to the unpaid fringe benefit contributions, ERISA at 29 U.S.C. § 1132(g)(2) mandates a reward of the relief requested by plaintiffs where a judgment is rendered in favor of a benefit fund. Thus, in regard to the fringe benefits delinquencies of H2K Construction, LLC, plaintiffs are entitled to \$76,647.98 in contributions, \$15,329.60 in liquidated damages and \$2,473.41 in interest, for a total of \$94,450.99. In regard to the amounts owed by defendants H2K Construction, LLC and Bluehill Properties, LLC under the Promissory Note, plaintiffs are entitled to judgment in the amount of \$224,095.09.

In regard to plaintiffs' attorneys' fees and costs, the collective bargaining agreement and the Promissory Note require defendants to pay these fees and costs which total \$1,410.00.

CONCLUSION

For the foregoing reasons plaintiffs are entitled to judgment against defendant H2K Construction, LLC in the amount of \$94,450.99 for delinquent fringe benefit contributions, liquidated damages and interest owed for the period of December, 2009 through February, 2010.

Plaintiffs are also entitled to judgment against defendants H2K Construction, LLC and Bluehill Properties, LLC, jointly and severally, in the amount of \$224,095.09 for the balance owed on the Promissory Note.

Finally, plaintiffs are entitled to judgment against defendants H2K Construction, LLC and Bluehill Properties, LLC, jointly and severally, for the legal fees and costs occurred by plaintiffs in this matter which total \$1,410.00.

Accordingly,


IT IS HEREBY ORDERED that plaintiffs' Motion for Default Judgment is **GRANTED**. [Doc. 18]

IT IS FURTHER ORDERED that H2K Construction, LLC shall pay to plaintiffs the amount of \$94,450.99 for delinquent fringe benefit contributions, liquidated damages and interest owed for the period of December, 2009 through February, 2010.

IT IS FURTHER ORDERED that H2K Construction, LLC and Bluehill Properties, LLC, jointly and severally, shall pay to plaintiffs \$224,095.09 for the balance owed on the Promissory Note.

IT IS FURTHER ORDERED that H2K Construction, LLC and Bluehill Properties, LLC, jointly and severally, shall pay to plaintiffs \$1,410.00 for legal fees and costs.

IT IS FURTHER ORDERED that a separate Default Judgment shall issue contemporaneously herewith.


HENRY E. AUTREY
UNITED STATES DISTRICT JUDGE

Dated this 15th day of June, 2010.